

1 Bryan Schwartz, SB# 209903
Adetunji Olude, SB# 264873
2 **BRYAN SCHWARTZ LAW**
1330 Broadway, Suite 1630
3 Oakland, CA 94612
Telephone: (510) 444-9300
4 Facsimile: (510) 444-9301
E-mail: bryan@bryanschwarzlaw.com
5 adetunji@bryanschwarzlaw.com

6 Attorneys for Plaintiffs and all others
similarly situated
7

8 Leon Greenberg, SB# 226253
Dana Sniegocki, SB# 261212
9 **LAW OFFICE OF LEON GREENBERG**
2965 South Jones Boulevard #E-4
10 Las Vegas, NV 89146
Telephone: (702) 383-6085
11 Facsimile: (702) 385-1827
E-mail: leongreenberg@overtimelaw.com
12 dana@overtimelaw.com

13 Attorneys for Plaintiffs and all others
similarly situated
14

15 Julie A. Vogelzang (SBN 174411)
Edward M. Cramp (SBN 212490)
16 Courtney L. Baird (SBN 234410)
DUANE MORRIS LLP
17 750 B Street, Suite 2900
San Diego, CA 92101-4681
18 Telephone: 619 744 2200
Facsimile: 619 744 2201
19 E-mail: jvogelzang@duanemorris.com
ecramp@duanemorris.com
20 clbaird@duanemorris.com

21 Attorneys for Defendants Von Curtis, Inc., P.M.
Advanced Education Inc., Paul Mitchell
22 Advanced Education LLC, John Paul Mitchell
Systems, PMNV Las Vegas, LLC, PMCA
23 Bakersfield, LLC, PMHBW LLC, Winn
Claybaugh, John Paul DeJoria, Paul Mantea,
24 D'Ann Evans, and Ann-Marie Safadi
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JESSICA MORALES, BERENISA
CORTES PALOMINOS, DYLAN
THOMAS, JANETTE BARRERA, and
FRANCES HANDCOCK, Individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

VON CURTIS, INC., P.M. ADVANCED
EDUCATION INC., PAUL MITCHELL
ADVANCED EDUCATION LLC, WINN
CLAYBAUGH, JOHN PAUL DEJORIA,
JOHN PAUL MITCHELL SYSTEMS,
PAUL MANTEA, D'ANN EVANS, ANN-
MARIE SAFADI, PMNV LAS VEGAS,
LLC, PMCA BAKERSFIELD, LLC,
PMHBW LLC, and "John Does," name
fictitious, name and number unknown, doing
business as "Paul Mitchell The School,"

Defendants.

Case No.: C 13-04996 SBA

**JOINT STIPULATION UNDER
LOCAL RULE 7-12 REGARDING
TIMING OF MOTION FOR
FLSA CONDITIONAL
CERTIFICATION AND CLASS
CERTIFICATION AND
TOLLING; ~~PROPOSED~~
ORDER**

Complaint filed: Oct. 25, 2013

Amended Complaint filed:

Apr. 29, 2014

Judge: Hon. Sandra Brown

Armstrong

Trial date: Not set

Plaintiffs Jessica Morales, Berenisa Cortes Palominos, Dylan Thomas and
Frances Handcock ("Plaintiffs") and Defendants Von Curtis, Inc., P.M. Advanced
Education Inc., Paul Mitchell Advanced Education LLC, John Paul Mitchell
Systems, PMNV Las Vegas, LLC, PMCA Bakersfield, LLC, PMHBW LLC, Winn
Claybaugh, John Paul DeJoria, Paul Mantea, D'Ann Evans, and Ann-Marie Safadi
(collectively "Defendants") hereby stipulate and agree as follows:

RECITALS

WHEREAS, Plaintiffs filed an Amended Complaint in this Court on April 29,
2014, against Defendants;

WHEREAS, Defendants' Motion to Dismiss the Amended Complaint
pursuant to Fed. Rule of Civ. P 12(b)(6) will be heard by the Court on July 29, 2014;

WHEREAS, in June 2014, the parties met and conferred regarding potential
class action certification under Fed. Rule Civ. P. 23 and regarding potential

1 collective action certification under 29 U.S.C. §216(b);

2 WHEREAS, the parties agree that this lawsuit presents unique legal claims
3 regarding whether or not the purported class members are employees of the
4 Defendants, covered by the federal and state wage laws;

5 WHEREAS, counsel for both sides have spent considerable time and effort
6 analyzing the most resourceful and efficient manner with which to approach
7 discovery and certification motions relating to the case;

8 WHEREAS, all parties have agreed that it is in the best interests of judicial
9 resources, time and effort to focus on the unique legal question at issue at the outset
10 of the case and prior to the filing of a motion for conditional certification of a
11 collective action or of a motion for class certification;

12 WHEREAS, all parties have agreed that there should be discovery and an
13 opportunity for court resolution of the legal issue via summary judgment motions on
14 whether the purported class members are employees of the Defendants covered by
15 the wage laws prior to the filing of a motion for class or collective certification;

16 WHEREAS, all parties understand that while some matters relating to class
17 certification may arise while performing discovery on the unique legal issues of
18 whether the purported class members are employees covered by the wage laws, the
19 main focus of the initial discovery should target the legal question, and discovery of
20 such matters shall be thoroughly addressed in an agreed-upon discovery plan, which
21 will be created for the case as part of the Case Management Statement required by
22 the Court's February 19, 2014 Case Management Scheduling Order for Reassigned
23 Civil Cases;

24 WHEREAS, the Court has scheduled a Case Management Conference to
25 occur on August 7, 2014;

26 WHEREAS, the Parties agree to conduct limited initial discovery regarding
27 the threshold legal issue of whether the purported class members are employees
28

1 covered by the wage laws in anticipation of Defendants' and Plaintiffs' summary
2 judgment motions;

3 WHEREAS the parties agree that if someone is deposed on the legal
4 questions that might relate to the summary judgment motions, Plaintiffs or
5 Defendants may also choose to depose him or her simultaneously regarding
6 questions that may bear upon class or collective action certification, rather than
7 requiring a deponent to reappear for deposition during a later phase of this litigation
8 – Plaintiffs and class members, in particular, will only be deposed once each;

9 WHEREAS, Defendants agree to toll the statute of limitations for Plaintiffs'
10 and putative class members' Fair Labor Standards Act ("FLSA") claims from the
11 date the Court issues an order granting this Stipulation to the date the Court issues
12 an order on any motion for summary judgment. By agreeing to this stipulation,
13 Defendants do not waive objections they have to Fed. R. Civ. P. 23 regarding FLSA
14 collective action certification, except that Defendants expressly waive any
15 arguments that such certification is improper because it would permit putative class
16 members to choose to participate in the class based upon their knowledge of the
17 Court's prior summary judgment ruling and thus, would amount to permitting a so-
18 called "one way" intervention as discussed in *American Pipe & Construction Co. v*
19 *Utah*, 414 U.S. 538, 547 (1974), and other related cases.

20 STIPULATION

21 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by
22 and between Plaintiffs and Defendants through their respective undersigned counsel,
23 that Plaintiffs shall not file any class action certification or collective action
24 certification motions under the FLSA and/or Fed. R. Civ. P. 23 until such time as
25 ordered by the Court in the Case Management Order. Initial discovery shall be
26 focused on the legal issue of whether or not the purported collective and class action
27 members are employees of the Defendants covered by the wage laws to allow the
28

parties to litigate that issue through summary judgment, and the statute of limitations for Plaintiffs' and putative class members' FLSA claims is tolled from the date the Court issues an order granting this Stipulation to the date the Court issues an order on any motion for summary judgment.

IT IS SO STIPULATED.

Dated: June 19, 2014

DUANE MORRIS LLP

By: /s/Julie A. Vogelzang

Julie A. Vogelzang
Edward M. Cramp
Courtney L. Baird
Attorneys for Defendants VON CURTIS,
INC., P.M. ADVANCED EDUCATION
INC., PAUL MITCHELL ADVANCED
EDUCATION LLC, JOHN PAUL
MITCHELL SYSTEMS, PMNV LAS
VEGAS, LLC, PMCA BAKERSFIELD,
LLC, PMHBW LLC, WINN
CLAYBAUGH, JOHN PAUL DEJORIA,
PAUL MANTEA, D'ANN EVANS, and
ANN-MARIE SAFADI

Dated: June 19, 2014

**BRYAN SCHWARTZ LAW
LAW OFFICE OF LEON GREENBERG**

By: /s/ Bryan Schwartz

Bryan Schwartz
Attorneys for Plaintiffs
JESSICA MORALES, BERENISA
CORTES PALOMINOS, DYLAN
THOMAS, JANETTE BARRERA, and
FRANCES HANDCOCK

ATTESTATION: Pursuant to Civil L.R. 5-1(i)(3), the filer attests that concurrence in the filing of this document has been obtained from each of the other signatories thereto.

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 6/24/2014


JUDGE, U.S. DISTRICT COURT